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of the 1885th meeting of the Council

(Justice and Home Affairs)

held in Brussels on Thursday 23 November 1995

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1. **Adoption of the agenda**

(11816/95 OJ/CONS 65 JAI 55)

At the request of the German delegation, the Council agreed to enter a further item on its agenda concerning "Readmission clauses in "mixed" agreements"

(11955/1/95 ASIM 323 REV 1) (see item 16 below).

2. **Approval of the list of "A" items**

(11817/95 PTS A 65)

The Council approved the list of "A" items subject to linguistic scrutiny reservations by the Swedish delegation on items 3, 4, 8, 11, 13 and 14, and by the Finnish delegation on items 3 and 13.

With regard to **item 2**, "Publicizing acts and other texts adopted in the field of asylum and immigration", the Council adopted the following statement:

"As experience has shown that asylum and immigration matters do not normally require confidentiality, the Council states that, in general, it is in favour of the publication of acts adopted by it in this field.

When adopting such acts, the Council will therefore decide in principle that they will be published in the Official Journal of the European Communities, except in cases where, at the request of one of its members, the Council notes that the unanimity required for this purpose by Article 18(3) of its Rules of Procedure has not been secured."

The references for items 2 and 10 should read as follows:

item 2: 11699/95 ASIM 313
+ COR 1 REV 1
+ EXT 1 (fin, s)

item 10: 11498/95 ASIM 309
+ EXT 1 (fin, s).

3. Harmonized application of the definition of refugee status in Article 1 of the Geneva Convention (11786/95 ASIM 317 + COR 1 + ADD 1)

The Council reached agreement in principle on the text contained in the above documents, subject to a linguistic scrutiny reservation by the Swedish delegation, with the wording of the new point 3 in the introductory provisions being amended. The text would be in the form of a common position and would be formally adopted as an "A" item and published in the Official Journal of the European Communities after finalization by the Legal/Linguistic experts.

The following unilateral statement by the Swedish delegation on point 5.2 (Persecution by third parties) would then be entered in the Council minutes:

"In relation to the question of origins of persecution, Sweden is of the opinion that persecution by third parties falls within the scope of the 1951 Geneva Convention where it is encouraged or permitted by the authorities. It may also fall within the scope of the Convention in other cases, when the authorities prove unable to offer protection."

4. Dublin Convention: progress of ratification procedures

The Council noted the presentation by the Netherlands delegation of a Protocol on the Court of Justice of the European Communities to be annexed to the Dublin Convention (10928/95 ASIM 293).

This document was currently being examined within the Council by the ad hoc Working Party on the Court of Justice.

The Council hoped that Ireland and the Netherlands would also be able to ratify the Convention at an early date.

5. **Draft Council act adopting a joint action on airport transit arrangements**

(11794/95 ASIM 319)

The Council reached an agreement in principle on the above draft joint action, deleting Bangladesh and Pakistan from the joint list at the request of the United Kingdom.

The Netherlands delegation tabled a parliamentary scrutiny reservation and the Swedish delegation a linguistic scrutiny reservation.

Formal adoption as an "A" item and publication in the Official Journal of the European Communities would take place following finalization of the text by the Legal/Linguistic Experts.

The following statements would then be entered in the Council minutes:

1. *"The Belgian, Danish, German, Greek, Spanish, French, Italian, Luxembourg, Netherlands, Austrian, Portuguese, Finnish and Swedish delegations state that their countries will apply the provisions of the Council's joint action on airport transit arrangements to Bangladesh and Pakistan nationals."*
2. *"The Commission would point out that its proposal for a Regulation determining the countries whose nationals must be in possession of a visa when crossing the external borders of the Member States included, among the visas required by the Regulation, the airport transit visa. This particular type of visa, which was also included in the Commission's proposal for a Regulation laying down a uniform format for visas, was maintained by the Council and appears explicitly in Regulation No 1683/95 of 29 May 1995 (based on Article 100c of the Treaty on European Union)."*

During the discussions on the proposal concerning the joint list of countries whose nationals would be subject to a visa requirement, the Council decided to omit the airport transit visa, not for reasons of jurisdiction but because it thought it was not necessary or desirable at the present time to harmonize the list of third countries whose nationals are subject to the airport visa requirement. On 25 September 1995 the Council adopted Regulation No 2317/95 with no reference to airport transit visas.

The Commission believes, however, that this is a matter of Community jurisdiction, and that the establishment of a joint list of third countries whose nationals must have visas to enter the international zone of an airport cannot be authorized except by a Council act based on Article 100c of the Treaty on European Union in accordance with the procedure laid down in that provision."

6. **Draft Convention on the crossing of external frontiers**

– **Progress report**

(11787/1/95 ASIM 318 REV 1)

The Council noted the situation as reported on in the abovementioned document.

The Commission representative announced that the Commission was considering the implications of the deadlock resulting from differences regarding the territorial application of the Convention.

7. **Protocol to the Convention on the establishment of a European Police Office (EUROPOL) concerning the attribution of competence to the Court of Justice of the European Communities in respect of preliminary rulings on the interpretation of the Convention** (11652/95 JUR 286 COUR 15)

The Council's discussion was based on a compromise drawn up by the Presidency and contained in 11652/95 JUR 286 COUR 15.

Fourteen delegations were in favour of conferring competence on the Court of Justice to give preliminary rulings on the interpretation of the Europol Convention.

In the view of the United Kingdom delegation, it was unnecessary to confer such competence. If it could be demonstrated that there were reasons for doing so, the United Kingdom delegation would however be prepared to examine them with an open mind.

At the Council's request, the Legal Service gave some examples of cases in which a uniform legal interpretation of the provisions of the Europol Convention might be important or necessary both for the protection of citizens' rights and for the smooth operation of Europol.

The Presidency asked the Legal Service to put these comments in writing and at the end of the discussions said that, in view of the need for a solution to this question, it would be submitted to the General Affairs Council on 4 December 1995 and to the Madrid European Council.

8. Report on external and internal terrorism

(11471/95 ENFOPOL 134)

The Council approved the Presidency's summary document assessing the external and internal terrorist threat to the Member States of the Union.

9. Report on organized crime in 1994

(10506/1/95 ENFOPOL 108 REV 1)

The Council took note of the above report at the end of a discussion in which several delegations expressed the view that the method used in this first attempt needed improvement.

The Danish delegation thought that the report should be more operationally-oriented.

The incoming Italian Presidency announced that it would submit proposals for improving the method.

10. Report by the Subgroup of Experts on Drugs for the Madrid European Council

(10979/2/95 CORDROGUE 46 REV 2)

The Council held an exchange of views on the above report.

The German delegation, supported by the Netherlands and United Kingdom delegations, urged that, after the Madrid European Council, the K.4 Committee should draw up a

list of specific measures. In the view of the Irish delegation, concerted action by the Union at its external frontiers was necessary to halt trafficking. The delegation said that the fight against drugs would be one of the major themes of the future Irish Presidency.

The Commission representative drew the Council's attention to the Conference to be organized by the Commission, together with the European Parliament, in Brussels on 7 and 8 December 1995.

At the end of discussions, the Council agreed to take note of the report, which would be submitted to the Madrid European Council.

11. Draft joint action against racism and xenophobia

(11629/95 JUSTPEN 156)

The Council examined the draft on the basis of 11629/95 JUSTPEN 165 and amended the last part of the first sentence in Title I.A as follows:

".... or, failing that, pending the possible adoption of the necessary provisions, to derogate from the principle of double criminality for such behaviour;"

The President of the Council noted that:

- fourteen delegations agreed to the draft, subject to a parliamentary scrutiny reservation by the Netherlands delegation and linguistic scrutiny reservations by the Finnish and Swedish delegations;
- in addition to its parliamentary scrutiny reservation, the United Kingdom delegation maintained its reservation on the draft and in particular on:
 - = the legally binding form of the instrument to be introduced (joint action);
 - = the content of the draft, with the comment that some sections of the text were not compatible with United Kingdom legislation;

The President said in conclusion that the dossier would be forwarded to the Council (General Affairs) and, if necessary, to the Madrid European Council.

The Greek delegation tabled a statement for entry in the Council minutes when the draft was adopted. The statement is given in Annex II to 12089/95 JUSTPEN 163.

12. Draft Protocol to the Convention on the protection of the Communities' financial interests

(11723/95 JUSTPEN 158)

The Council examined the above draft protocol on the basis of 11723/95 JUSTPEN 158 and SN 4506/95. The President noted that there was political agreement on the text of these documents, subject to:

- a parliamentary scrutiny reservation by the German, Danish, Netherlands and United Kingdom delegations;
- a scrutiny reservation by the United Kingdom delegation, on Article 4(2) of the draft in particular.

The Luxembourg delegation tabled a joint statement by the Benelux countries for entry in the Council minutes when the draft was adopted. The statement is set out in Annex II to 12549/95 JUSTPEN 167.

The President also concluded that the European Parliament would be consulted on the draft Protocol.

13. Draft Convention on the improvement of extradition between the Member States of the European Union

(11795/95 JUSTPEN 159)

The Council noted the progress made on the Convention to date and the conclusions adopted (11712/95 JUSTPEN 157 and 11795/95 JUSTPEN 159) and held a discussion which concentrated in particular on the question of political offences.

In this connection, some delegations stressed the desirability of excluding the political nature of an offence as a ground for refusing extradition within the European Union. Other delegations referred to the difficulties, particularly of a constitutional nature, standing in the way of such a solution without any restrictions attached.

However, these delegations showed flexibility where terrorist acts were concerned. They were therefore prepared to see the European Convention on the Suppression of Terrorism of 27 January 1977 revised.

Concluding its discussions the Council:

- noted that real progress had been made in the proceedings on the draft Convention;
- asked for a full draft of the Convention on extradition to be submitted to it in the first half of 1996;
- gave instructions for the continuation of discussions on political offences, bearing in mind the trend which had emerged that terrorist acts should not be regarded by the requested State as political offences justifying refusal of extradition.

14. Draft Convention on insolvency proceedings

The President announced that the Convention would be opened for signing at a Conference of Representatives of the Governments of Member States, which would take place that day at 15.00.

The Irish, Netherlands and United Kingdom delegations stated that they would not be able to sign the Convention at the Conference.

15. Draft Convention on jurisdiction and the enforcement of judgments in matrimonial matters

(11792/95 JUSTCIV 86)

The Council held an exchange of views on the draft statement submitted by the Presidency (11792/95 JUSTCIV 86).

It transpired that many delegations were able to endorse the approach in question. Others, however, felt that there might have to be reservations on other chapters of the Convention or that these matters might have to be dealt with in discussions on the review of the Convention on Infants at the Hague Conference.

At the end of discussions, the Council:

- noted that the political will existed to continue work on the draft Convention, without waiting for completion of the review of the Hague Convention on the protection of Infants;
- took note of the solution put forward by the Presidency for introducing greater flexibility regarding the way in which the exercise of parental authority was dealt with in the context of the Convention;
- gave instructions that discussions should be intensified, taking into account the solutions proposed by the Presidency in the above document.

16. (new) Readmission clauses in mixed agreements

(11955/1/95 ASIM 323 REV 1)

The Council approved the text contained in the abovementioned document, the Danish delegation having informed the Secretariat that it had withdrawn its parliamentary scrutiny reservation.

The text would be formally adopted as an "A" item and published in the Official Journal of the European Communities after being finalized by the legal/linguistic experts.

The following statement would be entered in the Council minutes:

"The Belgian, Danish, German, Greek, Netherlands and Austrian delegations reserve the right to request the inclusion of readmission clauses in mixed agreements for which the negotiating directives have already been adopted, and state that they will examine this option for all agreements currently under discussion."

17. Other business

(a) Follow-up to the La Gomera discussion on refugees from the former Yugoslavia

At the Commission's request, the Council discussed the problems which might be caused by repatriation of refugees from the former Yugoslavia if this were not organized on a coordinated basis.

At the end of discussions, the Presidency stated that this matter might be raised for discussion in a Third Pillar forum.

(b) Budapest Police School (ILEA)

The Presidency stressed the Union's interest in European participation in the ILEA.

The Council asked the K.4 Committee to submit specific proposals to the next Council meeting.

(c) Commission communication on the application of Article K.9

The Council took note of an oral statement by the Commission representative to the effect that the Commission did not intend to submit specific proposals on the possible application of Article K.9 of the TEU to asylum policy.

The Commission representative took the view that this was a question which should be dealt with at the forthcoming Intergovernmental Conference.

(d) Briefing on the negotiations on control of precursors with the Andean Pact countries

The Presidency informed the Council of the initialling of the Agreement on Precursors on 9 November 1995 and the forthcoming signing of the Agreement.

(e) Commission communication on funding for Title VI

The Commission informed the Council of the European Parliament's criticisms of the procedure for selection of projects, drawing attention to the risks this entailed as regards the European Parliament's adoption of the budgets for 1996 and 1997.

(f) Quality of legislation (Koopmans report)

The Netherlands delegation drew attention to this report, which contained suggestions regarding the improvement of the quality of legislation.

(g) Operation of the JHA Council

The Council discussed various operational problems concerning in particular the Third Pillar structures and the lack of schedules with timings and priorities (including organized crime).

The President suggested that this matter could be discussed by Ministers at their next informal meeting.

(h) Relations with the European Parliament

The Spanish delegation reported on contacts that had taken place or were to take place with the European Parliament during the six months of the Spanish Presidency.

(i) Transatlantic dialogue

The Spanish delegation reported on a visit by the President to Washington and his meeting with the United States Attorney-General, during which problems relating to the transatlantic dialogue had been raised.

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Signature of the Joint Declaration of Intent on lawful interception of telecommunications

The Governments of the fifteen Member States of the European Union and of Norway signed the Joint Declaration of Intent on lawful interception of telecommunications in Brussels on 23 November 1995.

This text remained open for signature by other states, in particular those forming part of the Quantico Group (United States, Canada, Australia and Hong Kong).
